Diebold Election Systems GEMS Version 1.18.19, AccuVote-TS Version 4.3.15D, Key Card Tool Version 1.0.1 and Spyrus Voter Card Encoder 1.3.2

Administrative Review and Analysis

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I.   SUMMARY OF THE APPLICATION

Procedures, hardware, firmware and software developed by Diebold Election Systems, Inc. (DESI) for use with the AccuVote-TS v. 4.3.15d, Spyrus Voter Card Encoder v. 1.3.2, GEMS v. 1.18.19 and the Key Card Tool v. 1.0.1.

II.   SUMMARY OF THE SYSTEM

This proposed system would be a modification to the AccuVote-TS Direct Recording Electronic (DRE) voting system and GEMS software package as currently used and configured in California. The application consists of four voting system components.

> 1. AccuVote-TS v. 4.3.15d
> The AccuVote-TS is a self-contained touchscreen voting device. The basic operation of the device is unchanged from the previously certified version. The voter activates the system by inserting a voter access card (a credit card sized device) into a built in smart card reader. The voter then makes his/her selections using the 15" LCD touchscreen. Units designed to be accessible to the blind or visually impaired also include a keypad and audio functionality to lead the voter through the selection and ballot casting procedures.
>
> The unit also includes two PCMCIA ports that can be used to store removable flash memory cards. The flash memory cards are used both to load ballot definitions onto the device and to store election returns for later return to the central tabulation center.
>
> The unit also includes a built in roll-based printer. The printer is designed to print reports and audit logs during the opening and closing of the polls. The printer is not designed to provide a voter-verified paper audit trail.
>
> The application does not include any modifications to the hardware of the AccuVote-TS. The application is for a modification from the previously certified version of the firmware to version 4.3.15.d. There following are the three primary types of modifications to the firmware:
>> A. One set of modifications was to add additional security features. Under the previously certified system, the pass codes used by the system to verify the authenticity of the voter access cards were static and defined by the vendor. Under the modification, the pass codes can be changed dynamically and are under the control of the jurisdiction.
>>
>> B. The second set of modifications corrected an error message that resulted in certain write-in contests in decline-to-state party contests. The previously certified version prevented a Decline-to-State voter from writing-in a candidate's name in more than one contest while casting a

ballot in another party's primary in certain instances (crossover). The new version corrects this error and allows such ballots to be cast.

C. The third set of modifications consisted of changes required by the Independent Testing Authority (ITA) to comply with FEC coding guidelines.

2. GEMS Software v. 1.18.19
GEMS is an Election Management System software package. Before an election, GEMS is used by a jurisdiction to create the ballot definition for an election. GEMS is then used to program the flash memory cards that are then loaded into the AccuVote-TS allowing them to be operated. After the election, GEMS is then used to compile and tabulate election returns from throughout the jurisdiction. Finally GEMS contains a series of reporting functions.

The modifications to the GEMS software from v. 1.18.18 to v. 1.18.19 fall into the following five categories:

A. Addition of the aforementioned additional security features of dynamic user-defined pass codes.

B. Modifications to the reports created by the software. Many of these changes are to correct errors identified within the prior reporting functions. For example, on some reports, contests with a large number of candidates would be truncated, excluding some candidate names. These errors have been corrected in GEMS 1.18.19.

C. Modifications to support a high-speed scanner. These modifications were not state tested, as the high-speed scanner was not part of the application being tested.

D. Corrections to anomalies identified either under previous versions or during previous testing processes. One important fix was to a previously identified problem relating to California requirements for the counting of provisional ballots. Under California law, a voter's provisional ballot must be counted for the contests in which that voter was eligible and entitled to vote, even if her/she cast his/her ballot in the incorrect precinct using the incorrect ballot style. Under the previous version of GEMS, jurisdictions did not have the ability to view the ballot image of an electronic provisional ballot prior to accepting or rejecting it. This forced a work-around to be used for the March 2004 election. The new version allows the jurisdiction to view the electronic provisional ballot prior to accepting or rejecting it. The process of accepting only a portion of the ballot will still involve a manual function of recreating the ballot using the voter's correct ballot style

E. Changes required by the Independent Testing Authority (ITA) to comply with FEC coding guidelines.

3. Spyrus Voter Card Encoder v. 1.3.2.

The third component of the application is the Spyrus Voter Card Encoder v. 1.3.2. The Spyrus is used by the pollworkers to activate voter access cards that the voter uses to activate the AccuVote-TS to display the voter's correct ballot style. The Spyrus is a handheld device slightly larger than a credit card. A poll worker would insert a voter access card into the Spyrus in order to program and activate it prior to giving it to a voter.

One important limitation of note with the Spyrus is that it can hold only eight ballot styles. Thus, in elections with a large number of parties, or precincts with a large number of ballot styles, multiple devices may be required.

The Spyrus has been modified from previous versions to incorporate the aforementioned additional security features of dynamic user-defined pass codes.

4. Key Card Tool v. 1.0.1.

The final component of the application is the Key Card Tool v. 1.0.1. The Key Card Tool is a new software application. It is the mechanism in which the additional security features of dynamic user-defined pass codes are enabled.

III.   TESTING INFORMATION AND RESULTS

1. Federal Testing

All of the system components covered in the application have been federally qualified under NASED # *N-1-06-12-12-002.* While some system components were tested against 2002 qualification standards, other components were tested against the 1990 qualification standards. Thus, the overall qualification is to the 1990 standards.

2. State Testing by the Secretary of State and Consultant.

The system was tested in Sacramento, California on June 28, 2004 and June 29, 2004 by Secretary of State staff in conjunction with the state's technical expert, Mr. Steve Freeman.

IV.   COMPLIANCE WITH STATE AND FEDERAL LAWS AND REGULATIONS

The Secretary of State of California has developed and promulgated a procedure for approving, certifying, reviewing, modifying, and decertifying voting systems, vote

tabulating systems, election observer panel plans, and auxiliary equipment, materials and procedures.

Four sections of this procedure, Sections 103, 104, 504, and 601, describe in detail the requirements any voting system must meet in order to be approved for use in California elections. These sections will be described in detail and the system will be analyzed for compliance in this Administrative Review and Analysis of the system.

1. **§103 (a) (1): The machine or device and its software shall be suitable for the purpose for which it is intended.**

The system meets this requirement.

2. **§103 (a) (2): The system shall preserve the secrecy of the ballot.**

The system meets this requirement.

3. **§103 (a) (3): The system shall be safe from fraud or manipulation.**

The proposed system includes modifications to provide additional security features to prevent fraud or manipulation. These include the ability to create unique user-defined security codes (as opposed to vendor defined security codes). In addition, these security measures provide for the permanent disabling of voter activation cards that are used that have the wrong security codes after three attempts.

4. **§103 (a) (4): The system shall be auditable for the purposes of an election recount or contest procedure.**

   The system meets current requirements relating to audits for the purposes of an election recount or contest procedures. The system does not include an Accessible Voter Verified Paper Audit trail (AVVPAT) as required in jurisdictions where the system was not used in the March 2004 primary election and in all jurisdictions beginning July 1, 2006.

   §103 (a) (5): The system shall comply with all appropriate federal and California laws and regulations.

The system meets this requirement. The modification of the GEMS software allows for the tabulation for only the portions of a provisional ballot the voter is deemed to have eligibility to vote in as required by California law.

6. **§103 (a) (6): The system shall have been certified, if applicable, by means of qualification testing by a Nationally Recognized Test Laboratory (NRTL) and shall meet or exceed the minimum requirements set forth in the *Performance and Test Standards for Punch Card, Mark Sense, and Direct Recording Electronic***

Voting Systems, or in any successor voluntary standard document, developed
and promulgated by the Federal Election Commission.

While some system components were tested against 2002 qualification standards, other
components were tested against the 1990 qualification standards. Thus, the overall
qualification is to the 1990 standards.

7. **§103 (b): In addition to the requirements of subdivision (a) of this section, voting
   systems, procedures, and equipment approved and certified by the Secretary of
   State shall promote accessible voting opportunities for persons with physical
   disabilities.**

The Ballot Station incorporates the Visually Impaired Ballot Station (VIBS) capability
which is fully compliant with the American Disability Association's (ADA) requirements
for election systems. The voter communicates with the unit via a keypad, either
telephone-style or accounting-style. The audio operational instructions, combined with
election-specific audio race information, lead the voter through the selection and ballot
casting procedures.

8. **§104 (a): Certification consists of three separate levels of testing: qualification,
   certification and acceptance.**

Qualification was completed to the 1990 qualification standards.

A technical consultant to the Secretary of State performed state certification testing.

Acceptance testing will be conducted by the county elections official once a county takes
receipt of the modifications.

9. **§104 (b): Certification tests shall include functional tests and qualitative
   assessment to ensure that the system operates in a manner that is acceptable
   under federal and state law and regulations.**

It is the opinion of the expert technical consultant that the scope of the certification test
was adequate to make basic recommendations and observations about the logical
accuracy, some user friendliness issues, and compliance with state law.

10. **§104 (c): Certification tests shall enhance public confidence by assuring that the
    system protects the secrecy of the ballot and the security of the voting process,
    and records and counts votes accurately.**

The proposed system includes modifications to provide additional security features to
prevent fraud or manipulation. These include the ability to create unique user-defined
security codes (as opposed to vendor defined security codes). In addition, these security
measures provide for the permanent disabling of voter activation cards that are used that
have the wrong security codes after three attempts.

11. **§104 (d): Certification tests shall promote public confidence that the system is easy to use or 'voter friendly.'**

The proposed system is not any less vote friendly than the currently certified system. A previously identified instance that would allow a voter to inadvertently skip past the review screen prior to casting his/her ballot on the AccuVote-TS has been corrected.

12. **§104 (e): Certification testing shall demonstrate that the system creates an audit trail showing both that the voter was able to vote for the candidate or for or against a measure of his or her choice and that the system correctly and consistently interpreted the voter's votes.**

The basic audit trail is adequate.

13. **§504: The Evaluation shall include a review of California Elections Code sections, which address the application.**

A review of the appropriate Elections Code sections was conducted.

> **§15360. During the official canvass of every election in which a voting system is used, the official conducting the election shall conduct a public manual tally of the ballots tabulated by those devices cast in 1 percent of the precincts chosen at random by the elections official. If 1 percent of the precincts should be less than one whole precinct, the tally shall be conducted in one precinct chosen at random by the elections official.**
>
> **In addition to the 1 percent count, the elections official shall, for each race not included in the initial group of precincts, count one additional precinct. The manual tally shall apply only to the race not previously counted.**

The system meets this requirement.

> **§19300 permit the voter to vote for all the candidates of one party or in part for the candidates of one party and in part for the candidates of one or more other parties.**

The system meets this requirement.

> **§19301. A voting machine shall provide in the general election for grouping under the name of the office to be voted on, all the candidates for the office with the designation of the parties, if any, by which they were respectively nominated.**
>
> **The designation may be by usual or reasonable abbreviation of party names.**

The system meets this requirement.

§19302. The labels on voting machines and the way in which candidates' names are grouped shall conform as nearly as possible to the form of ballot provided for in elections where voting machines are not used.

The system meets this requirement.

§19303. If the voting machine is so constructed that a voter can cast a vote in part for presidential electors of one party and in part for those of one or more other parties or those not nominated by any party, it may also be provided with: (a) one device for each party for voting for all the presidential electors of that party by one operation, (b) a ballot label therefore containing only the words "presidential electors" preceded by the name of the party and followed by the names of its candidates for the offices of President and Vice President, and (c) a registering device therefore which shall register the vote cast for the electors when thus voted collectively.

If a voting machine is so constructed that a voter can cast a vote in part for delegates to a national party convention of one party and in part for those of one or more other parties or those not nominated by any party, it may be provided with one device for each party for voting by one operation for each group of candidates to national conventions that may be voted for as a group according to the law governing presidential primaries.

No straight party voting device shall be used except for delegates to a national convention or for presidential electors.

The system complies with these requirements.

§19304. A write-in ballot shall be cast in its appropriate place on the machine, or it shall be void and not counted.

The systems allows for write-in votes. The modification corrects for an error message that was displayed in previous versions that prevented a Decline to State voter from writing-in a candidate in more than one contest while casting a ballot in another party's primary (crossover).

§19320. Before preparing a voting machine for any general election, the elections official shall mail written notice to the chairperson of the county central committee of at least two of the principal political parties, stating the time and place where machines will be prepared. At the specified time, one representative of each of the political parties shall be afforded an opportunity to see that the machines are in proper condition for use in the election.

The party representatives shall be sworn to perform faithfully their duties but shall not interfere with the officials or assume any of their duties. When a machine has been so examined by the representatives, it shall be sealed with a numbered metal seal. The representatives shall certify to the number of the machines, whether all of the counters are set at zero (000), and the number registered on the protective counter and on the seal.

The procedures submitted comply with this requirement.

§19321. The elections official shall affix ballot labels to the machines to correspond with the sample ballot for the election. He or she shall employ competent persons to assist him or her in affixing the labels and in putting the machines in order. Each machine shall be tested to ascertain whether it is operating properly.

The system procedures meet this requirement.

§19322. When a voting machine has been properly prepared for an election, it shall be locked against voting and sealed. After that initial preparation, a member of the precinct board or some duly authorized person, other than the one preparing the machines, shall inspect each machine and submit a written report. The report shall note the following: (1) Whether all of the registering counters are set at zero (000), (2) whether the machine is arranged in all respects in good order for the election, (3) whether the machine is locked, (4) the number on the protective counter, (5) the number on the seal. The keys shall be delivered to the election board together with a copy of the written report, made on the proper blanks, stating that the machine is in every way properly prepared for the election.

The system and the procedures submitted comply with this requirement.

§19340. Any member of a precinct board who has not previously attended a training class in the use of the voting machines and the duties of a board member shall be required to do so, unless appointed to fill an emergency vacancy.

The procedures submitted comply with this requirement.
§19341. The precinct board shall consist of one inspector and two judges who shall be appointed and compensated pursuant to the general election laws. One additional inspector or judge shall be appointed for each additional voting machine used in the polling place.

The procedures submitted comply with this requirement.

§19360. Before unsealing the envelope containing the keys and opening the doors concealing the counters the precinct board shall determine that the number on the seal on the machine and the number registered on the protective counter correspond to the numbers on the envelope.

Each member of the precinct board shall then carefully examine the counters to see that each registers zero (000). If the machine is provided with embossing, printing, or photography devices that record the readings of the counters the board shall, instead of opening the counter compartment, cause a "before election proof sheet" to be produced and determined by it that all counters register zero (000).

If any discrepancy is found in the numbers registered on the counters or the "before election proof sheet" the precinct board shall make, sign, and post a written statement attesting to this fact. In filling out the statement of return of votes cast, the precinct board shall subtract any number shown on the counter from the number shown on the counter at the close of the polls.

The procedures submitted comply with this requirement.

§19361. The keys to the voting machines shall be delivered to the precinct board no later than 12 hours before the opening of the polls. They shall be in an envelope upon which is written the designation and location of the election precinct, the number of the voting machine, the number on the seal, and the number registered on the protective counter. The precinct board member receiving the key shall sign a receipt.

The envelope shall not be opened until at least two members of the precinct board are present to determine that the envelope has not been opened.

At the close of the polls the keys shall be placed in the envelope supplied by the official and the number of the machine, the number written on the envelope.

The procedures submitted comply with this requirement.

§19362. The exterior of the voting machine and every part of the polling place shall be in plain view of the election precinct board and the poll watchers.

Each machine shall be at least four feet from the poll clerk's table.

The procedures submitted comply with this requirement.

§19363. Voters shall not remain in or occupy the booths or compartments longer than is necessary to mark their ballots, which shall not exceed five minutes. However, where no other voter would be inconvenienced, a longer period shall be allowed.

The procedures submitted comply with this requirement.

§19370. As soon as the polls are closed, the precinct board, in the presence of the watchers and all others lawfully present, shall immediately lock the voting machine against voting and open the counting compartments, giving full view of all counter numbers. A board member shall in the order of the offices as their titles are arranged on the machine, read and distinctly announce the name or designating number and letter on each counter for each candidate's name and the result as shown by the counter numbers. He or she shall also in the same manner announce the vote on each measure.

If the machine is provided with a recording device, in lieu of opening the counter compartment the precinct board shall proceed to operate the mechanism to produce the statement of return of votes cast record in a minimum of three copies, remove the irregular ballot, if any, record on the statement of return of votes cast record. The irregular ballot shall, be attached to the statement of result record of votes cast for the machine and become a part thereof. One copy of the statement of return of votes cast for each machine shall be posted upon the outside wall of the precinct for all to see. The statement of return of votes cast for each machine for the precinct shall constitute the precinct statement of result of votes cast.

The procedures submitted comply with this requirement.

§19371. Before adjourning, the precinct board shall seal the operating lever with the seal provided and lock the machine so that the voting and counting mechanism may not be operated.

It shall remain locked and sealed against operation until the time for filing a contest of election has expired, which shall not exceed a period of 30 days following the declaration of the result of the election by the body canvassing the returns.

Does not apply.

§19380. During the reading of the result of votes cast, any candidate or watcher who may desire to be present shall be admitted to the polling place. The proclamation of the result of the votes cast shall be distinctly announced by the precinct board who shall read the name of each candidate, or the designating number and letter of his or her counter, and the vote registered on the counter. The board shall also read the vote cast for and against each

measure submitted. The board shall not count votes cast for write-in candidates, but shall have these counted by the elections official. During the proclamation, many opportunities shall be given to any person lawfully present to compare the result so announced with the counter dials of the machine, and any necessary corrections shall immediately be made by the precinct board, after which the doors of the voting machine shall be closed and locked.

If the machine is provided with a recording device, the alternate procedures in Section 19370 may be used.

The procedures submitted comply with this requirement.

§19381. In each election district where voting machines are used, statements of the results of the vote cast shall be printed to conform with the type of voting machine used.

The designating number and letter on the counter for each candidate shall be printed next to the candidate's name on the statements of result of the vote cast. Two such statements shall be used in each election district.

The procedures submitted comply with this requirement.

§19382. The statement of the result of votes cast, which shall be certified by the precinct board, shall contain:
(a) The total number of votes cast.
(b) The number of votes cast for each candidate and measure as shown on the counter.
(c) The number of votes for persons not nominated.
(d) Printed directions to the precinct board for their guidance before the polls are opened and when the polls are closed.
(e) A certificate, which shall be signed by the election officers before the polls are opened, showing:
    (1) The delivery of the keys in a sealed envelope.
    (2) The number on the seal.
    (3) The number registered on the protective counter.
    (4) Whether all of the counters are set at zero (000).
    (5) Whether the public counter is set at zero (000).
    (6) Whether the ballot labels are properly placed in the machine.
(f) A certificate that shall be filled out after the polls have been closed, showing:
    (1) That the machine has been locked against voting and sealed.
    (2) The number of voters as shown on the public counter.
    (3) The number on the seal.
    (4) The number registered on the protective counter.
    (5) That the voting machine is closed and locked.

The reports generated by the AccuVote-TS and the procedures submitted comply with this requirement.

§19383. A member of the precinct board shall enter the vote, as registered, on the statements of result of votes cast, in the same order on the space that has the same name or designating number and letter, after which another member shall verify the figures by calling them off in the same manner from the counters of the machine.

The counter compartment of the voting machine shall remain open until the official returns and all other reports have been fully completed and verified by the precinct board.

If the machine is provided with a recording device, the alternate procedures in Section 19370 may be used.

The procedures submitted comply with this requirement.

§19384. The precinct board shall, before it adjourns, post conspicuously on the outside of the polling place a copy of the result of the votes cast at the polling place. The copy of the result shall be signed by the members of the precinct board.

If the machine is provided with a recording device, the statement of result of vote's cast produced by operating its mechanism may be considered the "result of the votes cast" at the polling place.

The procedures submitted comply with this requirement.
§19385. The precinct board shall immediately transmit unsealed to the elections official a copy of the result of the votes cast at the polling place, the copy shall be signed by the members of the precinct board, and shall be open to public inspection.

The procedures submitted comply with this requirement.
§19386. Before proceeding to canvass the returns of an election at which voting machines have been used to register the votes cast, the board authorized to canvass returns shall open the counter compartment and compare the records of votes cast for the several candidates voted for and for and against the several measures voted upon shown on each machine with those recorded on the statement of results of votes cast prepared from that machine by the precinct board. Any errors found on the statement shall be corrected by crossing out the recorded incorrect number, and recording the correct number nearby.

The procedures submitted comply with this requirement.

14. **§504 (b): A review of federal statutes or regulations, which address the application.**

The Voting Rights Act of 1965, as amended (42 U.S.C. 1973), requires all elections in certain covered jurisdictions to provide registration and voting materials and oral assistance in the language of a qualified language minority group in addition to English. Currently in California, there are six VRA languages (Spanish, Chinese, Japanese, Vietnamese Korean and Tagalog) as prescribed under the law.

Information can be displayed by on the DRE in additional languages as required by the jurisdiction for all required languages.   The system was federal tested with the following languages: English, Spanish, Chinese, Japanese, Korean, Tagalog and Vietnamese.

The National Voter Registration Act of 1993 (42 U.S.C. 1973gg and 11 CFR 8) allows for the casting of provisional ballots through Fail-Safe Voting procedures.

The system allows for the casting of fail-safe or provisional ballots on the AccuVote-TS. The system procedures also allows for the casting of provisional ballots through the use of specially marked envelopes using the previously certified AccuVote-OS voting system. The modification to the GEMS software allows for the tabulation of only the portions of a provisional ballot the voter is deemed to have eligibility to vote in as required by California law.

The Voting Accessibility for the Elderly and Handicapped Act of 1984 (42 U.S.C. 1973ee through 1973ee-6) requires each political subdivision conducting elections within each state to assure that all polling places for federal elections are accessible to elderly and handicapped voters, except in the case of an emergency as determined by the state's chief election officer or unless the state's chief election officer: (1) determines, by surveying all potential polling places, that no such place in the area is accessible or can be made temporarily accessible, and (2) assures that any handicapped voter assigned to an inaccessible polling place will, upon advance request under established state procedures, either be assigned to an accessible polling place or be provided an alternative means of casting a ballot on election day.

The Ballot Station incorporates the Visually Impaired Ballot Station (VIBS) capability which is fully compliant with the American Disability Association's (ADA) requirements for election systems. The voter communicates with the unit via a keypad, either telephone-style or accounting-style. The audio operational instructions, combined with election-specific audio race information, lead the voter through the selection and ballot casting procedures.

The system is no more or less accessible than the current system being used.

The Retention of Voting Documentation (42 U.S.C. 1974 through 1974e) statute applies in all jurisdictions and to all elections in which a federal candidate is on a ballot. It requires elections officials to preserve for 22 months all records and papers which came into their possession relating to an application, registration, payment of a poll tax, or other act requisite to voting. Note: The US Department of Justice considers this law to cover all voter registration records, all poll lists and

similar documents reflecting the identity of voters casting ballots at the polls, all applications for absentee ballots, all envelopes in which absentee ballots are returned for tabulation, all documents containing oaths of voters, all documents relating to challenges to voters or absentee ballots, all tally sheets and canvass reports, all records reflecting the appointment of persons entitled to act as poll officials or poll watchers, and all computer programs used to tabulate votes electronically. In addition, it is the Department of Justice's view that the phrase "other act requisite to voting" requires the retention of the ballots themselves, at least in those jurisdictions where a voter's electoral preference is manifested by marking a piece of paper or by punching holes in a computer card.

The system allows for the retention of the electronic record of the ballots.

15. **504 (c): A copy of the approved Qualification Test results released directly to the Secretary of State by a Nationally Recognized Test Laboratory (NRTL).**

While some system components were tested against 2002 qualification standards, other components were tested against the 1990 qualification standards. Thus, the overall qualification is to the 1990 standards.

16. **§504 (d): A review, if applicable, of transcripts or other materials from prior meetings or hearings on the proposed system, procedure, or modification, either in whole or in part.**

The relevant documentation has been reviewed.

17. **§504 (e): A review, if applicable, of any procedures manuals, guidelines or other materials adopted for use with the system addressed by the application.**

The procedures for use with this system have been reviewed.

18. **§504 (f): A review of any effect the application will have on the security of the election system.**

The proposed system includes modifications to provide additional security features to prevent fraud or manipulation. These include the ability to create unique user-defined security codes (as opposed to vendor defined security codes). In addition, these security measures provide for the permanent disabling of voter activation containing incorrect security codes after three attempts.

19. **§504 (g): A review of any effect the application will have on the accuracy of the election system.**

The system was tested by federal and state testers and deemed to record votes accurately.

20. **§504 (h): A review of any effect the application will have on the ease and convenience with which voters use the system.**

The proposed system is not any less voter friendly than the currently certified system.

21. **§504 (i): A review of any effect the application will have on the timeliness of vote reporting.**

The proposed system should improve the timeliness of the official canvas since it corrects the way in which provisional ballots are tabulated as a result of a recent change in the law.

22. **§504 (j): A review of any effect the application will have on the overall efficiency of the election system.**

The proposed system is presumably more efficient than the currently certified system due to enhancements made in the resolution of provisional ballots during the official canvass process.

23. **§504 (k): A Description of Deposit Materials showing that the Ballot Tally Software Source Code has been deposited in Escrow with an Escrow Company approved pursuant to Chapter 6, Division 7, Title 2 of the California Administrative Code, beginning with Section 20630.**

Proof of Escrow documents need to be received by the Secretary of State's office prior to use.

24. **§601: The Secretary of State shall not approve a proposed item without a finding that the item conforms to all applicable laws, procedures and regulations, including the right to a secret ballot, does not compromise the accuracy, security or integrity of the election process, nor interferes with the voter's ease and convenience in voting.**

The proposed system provides improved security while maintaining the secrecy of the ballot, the accuracy and integrity of the elections process and not interfering with the voter's ease and convenience in voting at least as effectively as the currently certified system.

V.   ADDITIONAL CONSIDERATIONS

1. Accessible Voter Verified Paper Audit Trail Standards

The system does not include an Accessible Voter Verified Paper Audit Trail (AVVPAT). Therefore, under the June 15, 2004 AVVPAT standards and the April 30, 2004 decertification directive, the proposed AccuVote-TS system can only be used in

jurisdictions that used the system in the March 2004 election. Further, the proposed system, without a modification to include an AVVPAT, can only be used through July 1, 2006 in those jurisdictions.

2. Decertification and Withdrawal of Approval of Certain DRE Voting Systems and Conditional Approval of the Use of Certain DRE Voting Systems.

The Secretary of State has imposed a series of additional security requirements for the use of DRE voting systems not including an AVVPAT.

3. **AccuVote-OS and AccuVote-TSx**

While GEMS v. 1.18.19 supports both the AccuVote-OS devices and the AccuVote-TSx voting device, GEMS v. 1.18.19 has not undergone state testing with any of these components. State testing is scheduled for the end of July to test the AccuVote-OS devices with the GEMS v. 1.18.19.

VI. <u>PUBLIC COMMENT</u>

In response to the public meeting notice being issued and allowing for written submissions, we have received 2 letters specific to this application. Copies of letters submitted are attached for your review. Both letters raised objections to the use of Diebold equipment generally and GEMS software specifically.

VII. <u>RECOMMENDATION</u>

Staff recommends the certification of the Diebold Election Systems, Inc.'s AccuVote-TS v. 4.3.15d, Spyrus Voter Card Encoder v. 1.3.2, GEMS v. 1.18.19 and the Key Card Tool v. 1.0.1 with the following condition:

GEMS version 1.18.19 is certified only for use with the AccuVote-TS v. 4.3.15d, Spyrus Voter Card Encoder v. 1.3.2 and the Key Card Tool v.1.0.1.